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Right of peoples to self-determination

Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly, in accordance with Economic and Social Council decision 2005/255 and Commission on Human Rights resolution 2005/2, the report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination.

* A/61/150.

** The present document was submitted late so as to include the maximum number of replies from Governments.

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Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Summary

The Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination was established in July 2005 pursuant to Commission on Human Rights resolution 2005/2.

The Working Group is composed of Najat Al-Hajjaji (Libyan Arab Jamahiriya), Amada Benavides (Colombia), Jose Luis Gomez del Prado (Spain), Alexander Nikitin (Russian Federation) and Shaista Shameem (Fiji). The Chairperson Rapporteur is Ms. Benavides.

The present report is presented in accordance with the terms of that resolution, in which the Commission on Human Rights requested the Working Group to report annually on the progress made in the fulfilment of its mandate to the Commission and to the General Assembly.

Section II of the report is devoted to the methods of work adopted by the Working Group at its first session. The Working Group also gives an overview of the activities it has been undertaken since its creation, notably the consultations held at governmental, intergovernmental and non-governmental levels, the meetings Working Group members have been invited to participate in, as well as the field missions requested or under way (sect. III).

The Working Group presents an analysis of the responses received to the questionnaire on its mandate and activities sent in November 2005 to Member States as well as to international organizations and non-governmental organizations (sect. IV).

In accordance with the request made by the Commission, the Working Group devotes the other parts of its report to studying: the effects of the activities of private companies offering military assistance, consultancy and security services on the international market on the enjoyment of human rights (sect. V); mercenaries and mercenary-related activities in different parts of the world (sect. VI); and international and national legislation on the issue of mercenarism (sect. VII). The final section describes the activities foreseen by the Working Group for the future.

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I. Introduction

1. At its sixty-first session, the Commission on Human Rights decided, in resolution 2005/2 of 7 April 2005, to establish a working group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, made up of five independent experts, one from each regional group, for a period of three years, the Working Group on Mercenaries succeeds the mandate of the Special Rapporteur, which had been in existence since 1987. Enrique Bernales Ballesteros (Peru) was Special Rapporteur from 1987 to 2004 and Shaista Shameen (Fiji) from 2004 to 2005.

2. The Working Group is composed of Najat Al-Hajjaji (Libyan Arab Jamahiriya), Amada Benavides (Colombia), José Luis Gómez del Prado (Spain), Alexander Nikitin (Russian Federation) and Shaista Shameem (Fiji).

3. The Working Group held its first session in Geneva from 10 to 14 October 2005 (see E/CN.4/2006/11) and from 13 to 17 February 2006 (see E/CN.4/2006/11/Add.1). Ms. Benavides was elected Chairperson-Rapporteur. The members decided to leave the Vice-Chairpersonship open, to be decided as needed on a case-by-case basis.

4. In paragraph 12 of its resolution the Commission requested the Working Group:

(a) To elaborate and present concrete proposals on possible new standards, general guidelines or basic principles encouraging the further protection of human rights, in particular the right of peoples to self-determination, while facing current and emergent threats posed by mercenaries or mercenary-related activities;

(b) To seek opinions and contributions from Governments and intergovernmental and non-governmental organizations on questions relating to its mandate;

(c) To monitor mercenaries and mercenary-related activities in all their forms and manifestations in different parts of the world;

(d) To study and identify emerging issues, manifestations and trends regarding mercenaries or mercenary-related activities and their impact on human rights, particularly on the right of peoples to self-determination;

(e) To monitor and study the effects of the activities of private companies offering military assistance, consultancy and security services on the international market on the enjoyment of human rights, particularly the right of peoples to self-determination, and to prepare draft international basic principles that encourage respect for human rights on the part of those companies in their activities.

5. The Commission further requested the Working Group to continue the work already done by the previous Special Rapporteurs on the strengthening of the international legal framework for the prevention and sanction of the recruitment, use, financing and training of mercenaries, taking into account the proposal for a new legal definition of a mercenary drafted by Mr. Ballesteros (E/CN.4/2004/15, para. 47); to report annually on the progress made in the fulfilment of its mandate to the Commission and to the General Assembly; to take into account, in the discharge of its mandate, that mercenary activities are continuing to occur in many parts of the world and are taking on new forms, manifestations and modalities and, in this

regard, to pay particular attention to the impact of the activities of private companies offering military assistance, consultancy and security services on the international market on the enjoyment of human rights by everyone and every people and, in particular, on the exercise of the right of peoples to self-determination.

6. Accordingly, and pursuant to this resolution, the Working Group submits the present report to the General Assembly for consideration at its sixty-first session.

II. Methods of work

7. At its first session, the Working Group discussed and adopted a document outlining its methods of work. Those methods take account of the specific features of the mandate of the Working Group on Mercenaries under Commission resolution 2005/2.

A. Functioning of the Working Group

8. Also at its first session, the members of the Working Group decided to elect the Chairperson-Rapporteur for one year, at its October session, taking due account of the need for rotation among the geographical regions.

9. When it is determined that a country situation requires a visit, and following an invitation from the Government concerned, the Working Group may conduct such a visit.

10. During the course of its deliberations, when dealing with individual cases or situations, the Working Group will render opinions which will be incorporated in its reports to the Human Rights Council and the General Assembly.

B. Implementation of the mandate of the Group

11. One of the elements of the mandate of the Group is to study, identify and monitor current and emerging issues, manifestations and trends of mercenaries, mercenary-related activities and activities of private military and private security companies which have an impact on human rights in general, including the right of peoples to self-determination. In the discharge of its mandate, the Working Group is guided by the relevant international standards set forth in the Universal Declaration of Human Rights and the relevant international instruments, in particular the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights (E/CN.4/Sub.2/2003/12/Rev.2) as well as, when appropriate, the standards contained in the International Convention against the Recruitment, Use, Financing and Training of Mercenaries; the Geneva Conventions of 1949 and the Additional Protocols thereto; the Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, the Convention for the Elimination of Mercenarism in Africa of the Organization of African Unity (OAU), the Commonwealth of Independent States (CIS) Model Law "On Counteracting Mercenarism", as well as other relevant

instruments such as the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

12. Within the terms of its mandate and in order to encourage further protection of human rights against current and emergent threats from mercenaries, mercenary-related activities and activities of private military and security companies, the Working Group will endeavour to elaborate concrete proposals and advisory opinions on possible new standards, general guidelines or basic principles. In addition, as requested by the Commission, the Working Group will continue the work undertaken by the previous Special Rapporteurs on the strengthening of the international legal framework for the prevention and sanction of the recruitment, use, financing and training of mercenaries, taking into account the proposal for a new legal definition of mercenary. The Working Group will also compile, analyse, publish and disseminate national, regional and international legislation on mercenarism and related activities. It will also look into the possibility of utilizing the Internet for public accessibility of these materials.

13. The Working Group will identify and prepare studies on emerging issues, manifestations and trends regarding mercenaries, mercenary-related activities and activities of private military and security companies.

14. As a general rule, within the meaning of resolution 2005/2, the Working Group will examine situations where mercenaries, mercenary-related activities and non-State actors, including private military and private security companies, impede the enjoyment of human rights or interfere with the self-determination of peoples and the constitutional and social order of States, either as part of security measures, or in armed conflict or in any other situation. The Working Group will also examine, as a special category, situations where children are used as mercenaries or involved in mercenary-related activities.

15. The Working Group will formally, and members of the Working Group will informally seek the opinions of and contributions from, and engage in consultations with Governments, relevant State organs, and intergovernmental and non-governmental organizations, as well as non-State actors, academic institutions and individuals.

C. Submission of communications to the Working Group and consideration of the communications

1. Submission of communications to the Working Group

16. Individual communications shall be submitted in writing and addressed to the Secretariat, giving the family name, first name and address of the sender and, if desired, his/her telephone and/or fax numbers, or any other acceptable means of contact, as well as any other information making it possible to identify the person, as well as his/her legal status. As far as possible, each case shall be presented separately. In order to facilitate the Group's work, it is hoped that communications will be submitted using the model questionnaire available from the Working Group's secretariat.

17. Communications may be addressed to the Working Group by a State, State organ, intergovernmental and non-governmental organization (NGO), or the individuals concerned, their families or their representatives, or any other relevant source.

18. In the interest of ensuring mutual cooperation, communications shall be brought to the attention of the Government concerned and its reply shall be brought to the attention of the source of the communication for its further comments. Those shall be transmitted by the Chairperson of the Group or, if he/she is not available, by the member designated by the Chairperson. In the case of Governments, the letter shall be transmitted through the Permanent Representative to the United Nations Office at Geneva. It shall request the Government to reply within 60 days after having carried out such inquiries as may be appropriate so as to furnish the Group with the fullest possible information.

2. Action taken on communications

19. In the light of the information obtained, the Working Group will take the appropriate action.

20. For those cases where private military or private security companies are involved, the opinions rendered by the Group shall be transmitted to the Government concerned with a copy, as appropriate, to the company involved. Three weeks after their transmittal to the Government they shall be sent to the source.

21. The opinions rendered by the Group shall be brought to the attention of the Human Rights Council in the report of the Working Group.

22. The Working Group shall take all appropriate measures to ensure that Governments inform it of the follow-up action taken on the recommendations made, thus enabling it to keep the Council informed of the progress made and of any difficulties encountered in implementing the recommendations, as well as of any failure to take action.

D. Urgent action procedure

23. A procedure known as "urgent action" may be used in the following cases:

(a) Where there are sufficiently reliable allegations that human rights violations are being perpetrated by mercenaries, as a result of mercenary-related activity or of activities of private military and security companies;

(b) There are particular circumstances that warrant an urgent action, even when no such threat is alleged to exist.

E. Coordination with other human rights mechanisms

24. Wishing to contribute to strengthening the good coordination that already exists between the various United Nations bodies working in the field of human rights, the Working Group will coordinate with other mechanisms as appropriate.

III. Activities of the Working Group

25. Taking into consideration the challenges that the former Commission on Human Rights has placed on the Working Group and the complex issues it has to confront in carrying out its mandate, the Working Group feels strongly that it should have the possibility of holding three sessions per year.

26. During the first session, the Working Group met with representatives of Member States and intergovernmental and non-governmental organizations. Similar consultations and exchanges of correspondences also took place outside the sessions.

A. Consultations with States

27. The Working Group met with the representatives of the coordinators of the five regional groups to discuss regional and country-specific concerns and to seek their cooperation with the mandate. This included sharing information; encouraging regional group members to ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries; and suggesting the adoption, when they do not already exist, of regional and national legislative frameworks. The Working Group emphasized the importance of continued dialogue with States in making progress in addressing mercenarism. It also sought support for a high-level policy round table, under the auspices of the United Nations, to undertake discussion of the fundamental question of the role of the State as holder of the monopoly on the use of force.

28. The Working Group invited States to recommend institutes and researchers with a view to creating an academic network of studies on emerging issues, manifestations and trends regarding mercenaries or mercenary-related activities, and on the effects of the activities of private companies offering military assistance, consultancy and security services on the international market on the enjoyment of human rights, particularly the right of peoples to self-determination.

29. The Working Group encouraged States to submit legislation and regulations relevant to mercenaries, mercenary-related activities and activities of private military and security companies, in order to enable it to continue its work on comparative analysis.

B. Consultations with intergovernmental organizations, United Nations bodies and the International Committee of the Red Cross

30. The Working Group held consultations with the African Union (AU) and met with representatives of the International Committee of the Red Cross (ICRC) and with representatives of the Office of the United Nations High Commissioner for Refugees (UNHCR).

31. During its consultations with AU, the Group requested information on the application of the 1977 Convention for the Elimination of Mercenarism in Africa, and expressed its interest in exploring opportunities for cooperation with AU in the

future. The text of the Commonwealth of Independent States legislation on mercenarism was provided to the AU representative.

32. A representative of UNHCR briefed the Working Group on areas of common concern and possible collaboration. He identified as a significant connection the use of mercenaries in causing displacement. Another area was preventing the recruitment of refugees and other persons of concern to UNHCR as mercenaries. Cooperation with UNHCR was pursued in June 2006 with the head of the UNHCR West Africa Unit. The Working Group members and UNHCR reiterated the need to cooperate closely on the question of recruitment from refugee camps, notably by private military and security companies (PMSCs).

33. On 25 April 2006, the Working Group sent a letter to 22 regional organizations expressing an interest in initiating with them a dialogue and an exchange of views. It received replies from the Organization of American States (OAS), the Organization for Security and Cooperation in Europe (OSCE), the Pacific Island Forum (PIF), the Council of Europe and the Interparliamentary Assembly of the Commonwealth of Independent States, expressing their willingness to cooperate.

34. PIF indicated particular interest in entering into a dialogue on the outsourcing of military activities and the utilization of Pacific Island nationals by private military companies. OSCE specified its readiness to share relevant experience and the vast OSCE field experience to enhance mutual understanding of the phenomenon. The Commonwealth of Independent States Interparliamentary Assembly informed the Group about the Model Law "On Counteracting Mercenarism", adopted on 19 November 2005.

35. By recommendation 1713 (2005), the Parliamentary Assembly of the Council of Europe established ad hoc terms of reference for the Council for Police Matters (PC-PM) relating to the regulation of private security services. The terms of reference indicate that "[a] growing concern in member states is the important increase in the provision and use of private security services, taking a great variety of forms. Recent research estimates that, in the member states of the Council of Europe, the number of staff involved in private security exceeds the number of those employed by the police. From being rather limited in scope and action, private security services are increasingly moving into areas which traditionally have been reserved for the public police. Ensuring security in society through the rule of law is a fundamental mission of public authorities."

36. The Council of Europe also informed the Group that a report on the regulation of private security services would be published by the end of 2006.

C. Consultations with non-governmental organizations

37. The Group met with representatives of Amnesty International, the Quaker United Nations Office, International Service for Human Rights, the Geneva Centre for the Democratic Control of Armed Forces (DCAF), the American Association of Jurists and the International Peace Research Institute. NGOs were invited to submit information on situations and allegations and to provide the Working Group with information about the incidence of NGOs employing private companies in the field of protection, and to assist the Working Group.

D. Consultations with private security companies

38. On 17 July 2006, the Working Group received a letter from the President of the International Peace Operations Association (IPOA), who offered to send a representative of IPOA to the next session of the Working Group. The communication also included the text of a draft code of conduct.

E. Other meetings

39. At its first session, the Working Group met with the United Nations High Commissioner for Human Rights, who sought feedback on the approach to the mandate. The Chairperson identified several issues as areas of focus. The High Commissioner assured the members of the support of her Office in carrying out the mandate. The Working Group also received information from the various departments of the Office of the United Nations High Commissioner for Human Rights (OHCHR).

40. A representative of ICRC informed the Group about the approaches to the question of international humanitarian law, including the definition of mercenaries and the responsibilities of States with respect to PMSCs. In the light of the many concerns raised regarding this definition of mercenary, the Working Group agreed to continue a dialogue with ICRC at each of its sessions.

41. The participation of members of the Working Group at several meetings is contained in its report to the Commission. In addition, on 29 November 2005, a member of the Working Group participated in the Second International Symposium "Integration, Migratory Flows and Human Rights in the Andean Region — Strategies and Alternatives", organized in San Cristobal, Venezuela, by the Universidad Nacional Experimental del Tachira. On 6 and 7 April 2006, a Working Group member participated in an international expert meeting on "The Human Rights Council: Challenges Ahead", organized in Madrid by the Fundación para las Relaciones Internacionales y el Diálogo Exterior (FRIDE) and the Pedro Arrupe Institute for Human Rights at the University of Deusto, Bilbao. On 12 July 2006, a member of the Working Group presented a report on international experiences of legal regulation of mercenarism and new definitions of mercenaries, at the 20th World Congress of the International Political Science Association in Fukuoka, Japan.

42. The Chairperson and a member of the Working Group participated in the thirteenth annual meeting of special procedures mandate holders which was held in Geneva from 19 to 23 June 2006. The Chairperson of the Working Group was elected as a member of the Coordination Committee of the special procedures system. The two Working Group members took advantage of their presence in Geneva to meet the Special Representative of the Secretary-General on Children and Armed Conflict. After a discussion of their respective areas of work, they agreed to share information, in particular concerning children recruited by PMSCs.

F. Field missions

43. In December 2005, the Working Group invited the Governments of Fiji and Papua New Guinea to share information regarding the situation of former soldiers of

Fiji origin allegedly recruited to undertake security operations in Bougainville, Papua New Guinea, without appropriate visas. The case was considered during the February meeting and on 7 March 2006, the Group decided to request both Governments to extend it an invitation to visit in order to undertake a further assessment of the situation in the two countries. Those requests were reiterated by letters dated 25 April 2006. As of 8 August 2006, no response had been received.

44. On 10 March 2006, the Working Group sent a request to the Governments of Chile and Honduras for invitations to visit those countries.

45. On 21 April 2006, the Working Group requested invitations from the Governments of Colombia, Ecuador and Peru. By letters dated 7 and 9 June 2006, the Group reiterated the requests. By letters dated 21 and 23 June 2006, the Governments of Honduras and Ecuador, respectively, conveyed a positive response to the Working Group. The mission to Honduras took place from 21 to 25 August followed by the mission to Ecuador from 28 August to 1 September 2006. Reports on both missions will be submitted to the Human Rights Council. On 14 August 2006, the Working Group received positive feedback from the Permanent Mission of Peru.

IV. Analysis of the survey

46. In mid-November 2005, the Working Group sent a questionnaire concerning its mandate and activities to all Member States as well as to eight intergovernmental organizations and United Nations bodies and 36 NGOs. By letter dated 12 June 2006, the Working Group reiterated its invitation to submit information to those States that had not yet responded.

47. As of 21 August 2006, responses had been received from the following 13 States: Armenia, Colombia, Costa Rica, Ghana, Honduras, Lebanon, Malaysia, Mauritius, Mexico, Morocco, Namibia, Panama and Venezuela (Bolivarian Republic of).

48. The United Nations Research Institute for Social Development pointed out that its research programme did not include any projects dealing with the issue of mercenaries, while the Department for Safety and Security of the Secretariat indicated that the issues addressed fell outside its mandate. A response was also received from the NGO Médecins sans frontières which reported that the organization had no expertise in this field.

49. The Working Group would like to warmly thank all those that responded and presents herewith an analysis of the responses received.

50. The questionnaire first inquired into the Governments' intentions to counteract mercenarism, mercenary-related activities and to support the International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

51. Ghana, Lebanon, Mauritius, Morocco and Venezuela reported their intention to accede to the International Convention.

52. Armenia, Ghana, Lebanon, Morocco and Venezuela indicated that they would strengthen their national legislation addressing mercenaries. The criminal code of Armenia provides in its article 395 that recruiting, training, financing or supporting mercenaries materially or in any other way, as well as using them in armed conflicts

or military actions is punished by imprisonment for 5 to 10 years while the participation of a mercenary in an armed conflict or military action is punished by imprisonment for 3 to 7 years. This article defines a mercenary as a specially recruited person who acts in order to receive financial compensation and is not a citizen of the State participating in the armed conflict or military action, does not permanently reside in its territory, is not a member of the armed forces of the State participating in the armed conflict or military action, and is not sent by another State to carry out official duties in the armed forces.

53. Namibia informed the Working Group that the National Defence Act enacted by the National Assembly contained provisions prohibiting not only mercenary-related activities, but also prohibiting Namibian citizens from serving in the military forces of other countries without written authorization of the Minister of Defence.

54. Armenia, Colombia, Costa Rica, Ghana, Malaysia, Morocco, Mexico, Panama and Venezuela indicated that they would actively participate in discussions on regional arrangements to combat the phenomenon, while Costa Rica, Ghana, Honduras, Morocco and Venezuela committed themselves to monitor mercenary activities and prosecute perpetrators.

55. The Government of Honduras further indicated that neither the use of the national territory by organizations that recruit mercenaries nor the transit of mercenaries through the country is allowed.

56. Asked what they would do to assist the United Nations through the work of the Working Group, States said that they would (a) provide information to the Group (Armenia, Costa Rica, Ghana, Honduras, Mauritius, Morocco, Mexico and Venezuela); (b) identify emerging trends in mercenarism (Armenia, Ghana, Mexico and Panama); (c) submit concrete proposals on possible new standards and guidelines encouraging further protection of human rights in addressing mercenarism (Mexico and Venezuela); and (d) monitor the activities of private companies offering military assistance, consultancy and security services on the international market (Armenia, Ghana, Honduras, Malaysia, Namibia and Venezuela).

57. States and organizations were also requested to express their views on the phenomenon of mercenarism and on how the Working Group could effectively discharge its mandate.

58. Costa Rica, Colombia, Mauritius and Morocco reported that they had not registered any cases of the presence of mercenaries in their respective countries. However, Costa Rica indicated full support for applying appropriate legal action to prevent the country being used as a possible base of operation for the destabilization of Governments in the region.

59. Namibia underlined the critical importance of the promotion and enhancement of international cooperation among States for the prevention, prosecution and punishment of mercenary-related offences, and encouraged countries that had not yet enacted legislation prohibiting mercenarism to put such legislation in place.

60. Ghana pointed out that refugee camps in the subregion had become centres of recruitment for mercenaries. More specifically, in Ghana it had been observed that all parties to the conflict in Côte d'Ivoire had been recruiting mercenaries from these camps. The Government further stated that some countries were

supplementing their military forces with mercenaries recruited from other countries, and advised countries within the subregion not to lend support to mercenaries in their countries who sought to subvert neighbouring Governments, e.g. by providing secret training camps.

61. Lebanon stated that it considered it important for the Working Group to convince more States to accede to the International Convention and to ensure compliance with the principles of international law and resolutions with international legitimacy. The identification of mechanisms to strengthen the international judicial system was also highlighted by Costa Rica as an important area on which the Working Group would have to focus. Mexico recommended that the Working Group should consider the new realities of mercenary activity and fill in the gaps with respect to international law.

62. Colombia stressed the need for the Working Group to identify the locations where this phenomenon existed, investigate the mode of operation and the manner in which mercenaries engaged in combat, and share the results with States in order to prevent the spread of this phenomenon to other locations. Panama stressed the need for the Working Group to share information and experience on a regular basis with partners and sectors so as to arrive at an understanding of the phenomenon and to focus attention on the legal definition of mercenaries and their activities. Morocco suggested that the Working Group should make recommendations to the Security Council with a view to applying material sanctions against States that harbour, encourage or produce mercenaries.

63. Pointing to the changing nature of conflict globally and the impact of the reformulation of the concept of "armed forces" on the recruitment, use, financing and training of mercenaries, Venezuela considered it important, as had Special Rapporteur Shaista Shameem, to examine the legal definition of mercenary. In this regard, the Government expressed the view that the definition should include legal persons, as well as private companies. The activities of PMSCs should be regulated and subjected to international monitoring. Nationals of countries who, for pay, take part in activities organized by another State against their own countries should also be included in the definition. The Working Group should promote the protection of human rights against threats posed by mercenary activities by drafting and presenting proposals for guidelines or basic principles to guide the work of national and international organizations that are involved in the dissemination of information. The possibility of setting up a regimen for licensing private security firms and maintaining an international register of such companies should be studied.

64. In its response, the United Nations Office for Legal Affairs outlined a number of concerns with regard to the political and legal implications of the proposed definition of mercenary, noting that it raises many issues which were contentious during the drawing up of the Convention. It also noted that links between mercenarism and terrorism are being deliberated by the Ad Hoc Committee established by General Assembly resolution 51/210, which has itself not made any connection. The Office suggested that Contracting States ought to initiate and take the lead in any effort to amend the International Convention and that the Working Group should consider whether the Sixth Committee should be involved in discussions concerning the definition, given its previous involvement in the elaboration of the International Convention.

V. Thematic issues

65. Private military and security companies and their employees fall into a grey area not specifically covered by the International Convention. In the absence of appropriate regulation, control and monitoring, the activities of these companies are in a number of situations a danger for the protection of human rights. These situations include situations of conflict, situations of authoritarian Governments and situations where local indigenous peoples are vulnerable. Indeed, extractive industries (oil, gas, timber and mining transnationals), in order to protect their premises and interests, as well as national and local authorities, may rely on mercenaries and PMSCs to restrict public demonstrations and protest movements.

66. The Working Group has received information indicating the existence of links between the activities of PMSCs and groups of mercenaries. Documented events include the attempted coup d'état in Equatorial Guinea by a group of mercenaries and executives of private security companies and in Papua New Guinea (Bougainville Island). These incidents, among others, present the international community with a complex phenomenon: mercenaries recruited by private security companies operating in situations of armed conflict and implicated in acts such as summary executions, torture, trafficking in persons, drugs and arms, terrorism, paramilitary and covert operations and human rights violations, as well as links between mercenaries, mercenary-related activities and activities of PMSCs and the extractive industry.

67. In some African regions, mercenarism, which comprises the use of mercenaries, the creation of private armies, the illegal exploitation of natural resources and trafficking in arms, has been inextricably linked with the continuation of armed conflicts. There are credible allegations that the activities of a timber company operating in Liberia were used to finance private militia forces to torture, intimidate, harass, rape, enslave, run a brothel, forcibly conscript child soldiers and smuggle arms. These militias were alleged to have participated in massacres of civilians.

68. The proliferation and trafficking of arms and the recruitment of mercenaries are fuelling and exacerbating conflicts in West Africa, as has been recognized by the Security Council.[1] Within the context of the links between new types of mercenaries and arms transfers, the Working Group endorses the recommendation made by the experts at its first meeting. The linkage between paramilitaries, mercenarism and covert operations is illustrated in the response of the Government of Venezuela to the questionnaire (see above). The Venezuelan authorities also indicated that there had been mercenary activities in the 2002 coup d'état.

69. The Working Group is particularly concerned at the impunity enjoyed by PMSCs operating in armed conflicts and violating human rights, and at the phenomenon of outsourcing by States of core military functions to those companies. The human rights violations allegedly perpetrated in the Abu Ghraib prison in Iraq involving employees of two private military and security companies are symptomatic of the concerns raised by outsourcing. The Working Group would like to emphasize that to its knowledge, the core military functions that were carried out by the employees of the two private military companies concerned were performed

[1] Security Council resolution 1607 (2005) of 21 June 2005.

without regulatory mechanisms requiring oversight and accountability. Although it seems that some internal investigations have been conducted by the two private contractors involved in the alleged human rights violations in Abu Ghraib, the employees allegedly implicated have neither been subject to external investigations nor have they been legally sanctioned, contrary to the assurances given by the Government of the United States of America.[2] Indeed, in the report of the High Commissioner for Human Rights on the situation in Iraq (E/CN.4/2005/4), the attention of United States authorities was drawn to the fact that an aspect of the security situation in Iraq was the hiring by the Coalition forces of private security organizations that had deployed personnel in significant numbers, estimated to be as high as 20,000, which raises the questions of what legal regime applies to them and what their duty of protection is. In comments submitted by United States authorities to the United Nations, the point was made that "United States contract personnel are under the direction of the Coalition and are subject to criminal jurisdiction in United States federal courts" (para. 24).

70. However, there have been reports indicating that out of 20 known cases of civilians suspected of criminal acts, there has only been one indictment, of a contractor on assault charges in connection with the death of a detainee in Afghanistan. There has not been a single prosecution of a private military contractor in Iraq.[3]

71. Other human rights violations committed by private security companies have been reported by special procedures mandate holders. The Special Rapporteur on extrajudicial, summary or arbitrary executions on a visit to Honduras concluded that a large number of children had been killed by employees of private security companies. These companies should under no circumstances be regarded as a substitute for or be allowed to take over the functions of the law enforcement authorities (see E/CN.4/2003/3/Add.2).

72. A further development is the increasing use of private security companies by some United Nations departments, programmes and agencies. The international literature on private military and security companies indicates that the United Nations has been contracting the services of these companies in a number of situations, particularly in zones of armed conflict. There have been allegations of human rights and international law violations by some of the companies contracted

[2] This seems to be a general pattern among private military and security companies. It has been reported that the only measure applied by a private military company operating in the 1990s in Bosnia and Herzegovina against its employees denounced by their colleagues as being allegedly implicated in sex crimes and a forced prostitution ring was to terminate their contracts, as well as those of the whistle-blowers who denounced them. D. Avant, *The Market for Force* (Cambridge, United Kingdom, Cambridge University Press, 2005), p. 234; P. W. Singer, *Corporate Warriors* (Ithaca, New York, Cornell University Press, 2004), pp. 222, 236. See also P. Chatterjee and A. C. Thompson, "Private Contractors and Torture at Abu Ghraib", www.CorpWatch.org, 7 March 2004; D. Phinney, "Prison Interrogation for Profit", www.CorpWatch.org, 15 September 2004; J. Brinkley and J. Glanz, "Iraq: Contractors Implicated in Prison Abuse Remain on Job", *The New York Times*, 4 May 2004; S. Harris, "Iraq: Oversight of Interrogation Contracts Broke Down", www.GovExec.com, 4 May 2005; P. Chatterjee, "An Interrogator Speaks Out", www.CorpWatch.org, 7 May 2005.

[3] See L. Cox, "Controversy of private security contractors hired by United States Government continues", news conference for presentation of Amnesty International's *Annual Report 2006*.

by the United Nations.[4] The Working Group is aware that the United Nations Interim Administration Mission in Kosovo (UNMIK) has issued regulation 2000/33 on the Licensing of Security Services Providers in Kosovo and Regulation of Their Employees. The United Nations Inter-Agency Standing Committee (IASC) and the Office for the Coordination of Humanitarian Affairs (OCHA) have considered the relationship between humanitarian operations and private security companies.[5] In response to the questionnaire sent by the Working Group in November 2005, the Department of Safety and Security informed the Working Group that General Assembly resolution 59/276, sect. XI, which establishes the Department, recognizes the need for the urgent implementation of a unified and strengthened management system in the United Nations, including continuous review of threat and risk assessment. The Department cannot assume responsibility for any of the issues addressed by the Working Group since they fall outside its mandate, but will undertake to provide available information relevant to the framework of the Working Group on a case-by-case basis, should it be available.

73. The Working Group would be pleased to discuss other guidelines that have been developed, and to what extent human rights standards form part of these policies.

74. It has also been reported that some PMSCs make arrangements with some Governments, particularly in Africa, under which, in exchange for providing security services, they receive concessions for the exploitation of natural resources (oil, gas, diamonds, timber and minerals). This may constitute violations of the economic rights of the local people, particularly their right to development (see E/CN.4/2000/NGO/148).

75. The Working Group wishes to insist on the primary responsibility of States under international and domestic law to maintain public security and law and order. They should not relinquish these prerogatives and should regulate, control and monitor the activities of such companies. The International Convention has a "gray zone" regarding core security functions that traditionally were performed by the army or the police. In addition, it does not contain any monitoring mechanism.

76. In an attempt to encompass the above-mentioned issues and fill the existing normative gap confronting the international community, the former Special Rapporteur on the use of mercenaries, Mr. Ballesteros, proposed to amend articles 1-3 of the International Convention which deal with the legal definition of

[4] A. Barret and S. Hughes, "British firm accused in United Nations 'sex scandal'", *The Observer*, 29 July 2001; P. W. Singer, op. cit., pp. 222-223; and "The Private Military Industry and Iraq: What We Have Learned and What Next?", Geneva Centre for Democratic Control of Armed Forces, 2004 (available at: www.dcaf.ch); D. Avant, op. cit., pp. 101-103, p. 171; D. Isenberg, "A Fistful of Contractors", British American Security Information Council, 2004 (available at www.basicint.org/pubs); D. Phinney, "From Mercenaries to Peacemakers", 29 November 2005, www.CorpWatch.org.

[5] OCHA et. al, Guidelines on the Use of Military and Civil Defence Assets to Support United Nations Humanitarian Activities in Complex Emergencies, March 2003 (available at http://www.coe-dmha.org/guidelines01.htm); OCHA, Use of Military or Armed Escorts for Humanitarian Convoys, Discussion Paper and Non-Binding Generic Guidelines, (draft), September 2001 (available at http://www.who.int/hoc/network/interagency/GuidlinesonArmedEscorts_Sept2001.pdf); Civil-Military Relationship in Complex Emergencies, An IASC reference paper, June 2004, p. 5 (available at http://www.coe-dmha.org/Media/Guidance/IIASCReference.pdf).

mercenaries (see A/58/115, annex). His proposed amended article 3 of the Convention would include as internationally prosecutable offences the participation of a mercenary in: "destabilization of legitimate governments, terrorism, trafficking in persons, drugs and arms and any other illicit trafficking, sabotage, selective assassination, transnational organized crime, forcible control of valuable natural resources and unlawful possession of nuclear or bacteriological materials". The Commonwealth of Independent States incorporated into its Model Law "On Counteracting Mercenarism" a group of articles on State licensing of private military and security companies aimed at preventing mercenary-related activities. The replies of Member States to the proposal for a new legal definition of mercenaries as well as a summary of the views of experts participating at the third meeting of experts on traditional and new forms of mercenary activity (see E/CN.4/2005/23) can be found in the report of former Special Rapporteur, Ms. Shaheen, to the General Assembly at its sixtieth session (A/60/263, paras. 7-14 and 25-32).

VI. Country situations

A. Africa

77. During its February meeting, the Working Group considered the reported situation in prison of alleged mercenaries convicted in 2004 of attempting to overthrow the Government of Equatorial Guinea, and related allegations of torture and mistreatment.

78. By letter dated 7 March 2006, the Working Group reminded the authorities of Equatorial Guinea of the communication sent to the Government on 2 June 2005 by the former Special Rapporteur, reiterated concerns vis-à-vis the situation, and urged the Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned persons were respected and that any person found guilty of the alleged violations would be held accountable.

79. The General Assembly has on numerous occasions expressed its concern at the danger that activities of mercenaries pose to peace and security in developing countries, particularly in Africa.[6] In his reports, former Special Rapporteur Ballesteros has identified such situations. Several reports of the Security Council[7] also indicate the presence of such activities in armed conflicts, particularly in West and Central Africa and the Great Lakes Region.

80. In October 2005, the attention of the international community was drawn to the fact that the Government of Côte d'Ivoire was recruiting Liberian children along with hundreds of former combatants in Liberia's civil war in the face of renewed

[6] Resolution 59/178 and previous resolutions.

[7] Fifth progress report of the Secretary-General on the United Nations Mission in Liberia (S/2004/972). Report of the Panel of Experts on Liberia (see S/2005/745, paras. 137-147); final report of the Group of Experts on Côte d'Ivoire (see S/2005/699). This report indicates that prior to the embargo in November 2004 Côte d'Ivoire contracted a significant number of foreign State and private military companies from Belarus, Bulgaria, France, Israel, the Russian Federation, South Africa, Ukraine and the United Kingdom to assist it with training, maintenance and use of military equipment (paras. 158-167).

fighting with rebel forces.[8] Owing to the economic situation of their families ex-combatant children have been obliged to abandon educational and vocational programmes which had been established for them in towns close to the border with Côte d'Ivoire. Apparently, this situation has been exploited by commanders who recruit them to fight in Côte d'Ivoire. Civilian police of the United Nations Mission in Liberia (UNMIL), together with the Liberian National Police, arrested an alleged Ivorian recruiter in March 2005. As a result, recruitment abated for a time, but the alleged recruiter was later released for lack of evidence (see S/2005/366). The Government of Ghana has also reported mercenary activities in the region (see para. 60 above).

B. Fiji and Papua New Guinea

81. The Working Group has been following closely the situation in Papua New Guinea, on the autonomous island province of Bougainville, which has had and continues to have implications for the subregion following the Bougainville Peace Agreement in 2001. The conflict there, beginning in 1988, claimed between 15,000 and 20,000 lives. The United Nations Observation Mission in Bougainville (UNOMB) declared the weapons disposal programme complete and verified that the situation in Bougainville was a conducive to holding elections, thus ending its mandated presence on 30 June 2005. The Working Group has since received information on the situation of a group of former soldiers of Fiji origin allegedly recruited to undertake mercenary activities in Bougainville. Reportedly entering Papua New Guinea without appropriate visas, the individuals have allegedly been recruited to provide security training and advice for a former Bougainville leader who controls the "no-go zone" in the south of Bougainville. While it has been reported that among this group, five persons — three from Fiji, one from Australia and one from the United Kingdom — left Bougainville in the course of the year, occasional violence and clashes have occurred throughout 2006, including in the areas of Buin and Siwai. The Working Group urges all actors to take precautionary measures and de-escalate challenges to law and order in the southern region of Bougainville, and reiterates its interest in undertaking a joint country visit to Papua New Guinea and Fiji.

C. Latin America and the Caribbean

82. With the complexities of new conflicts, Governments have increasingly contracted private security companies in the region. Reports indicate that these private companies are involved in training and recruiting Latin American personnel to engage in armed conflict situations around the world.

83. Another concern is the presence of private contractors providing security services and the training of personnel in strategic zones of water and energy reserves, in particular oil fields, thus precluding the local population from enjoying the right to development, including the rights to food and adequate housing.

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[8] From: http://hrw.org/english/docs/2005/10/27/cotedi11935.htm. According to a United Nations report (see final report of the Group of Experts on Côte d'Ivoire) (S/2005/699), the recruitment of children seems to have been taking place since at least November 2004.

84. In order to obtain financial assistance from a third country, national legislation neither allows nationals of that country to be tried in the host country nor that cases involving them be brought to the International Criminal Court.

85. In some countries, activities related to counter-insurgency, antinarcotics activities or combating terrorism in Latin America have resulted in human rights violations against civilian populations, such as indiscriminate shelling, extrajudicial killings, sexual exploitation and trafficking in arms.

86. The contracting of Latin American personnel to work in military operations in Iraq and Afghanistan has been amply covered by the media, as were allegations by persons affected by unclear contract clauses which violate international labour norms and the Universal Declaration of Human Rights.

87. The Working Group has received information indicating that high salaries may encourage members of national armed forces to resign in order to work for private companies.

88. Transnational companies create satellite subsidiaries with legal personality in one country, their logistical and contractual bases in another, and recruit personnel from neighbouring countries. Allegations by personnel indicate that while in theory they have been contracted for non-military functions, they find themselves in situations where they receive military training, carry weapons and work under permanent stress for up to 16 hours a day. If they do not follow the rules of the company, they are prevented from returning to their country of origin.

89. In addition to violations of international labour norms, the question arises as to who is responsible for the human rights violations committed by these personnel, trained by companies with little control and without a clear country of origin.

90. On 17 July 2006, the Working Group sent a letter of allegation informing the Chilean authorities that it had received information concerning the recruitment of ex-military and ex-police from Chile by private companies located in Chile or abroad, some of them administrated by Chilean nationals.

VII. National, regional and international legislation/status of the Convention

91. The Working Group considered aspects of national, regional and international legislation, particularly the CIS Model Law "On Counteracting Mercenarism" and relevant instruments of the Economic Community of West African States (ECOWAS), as well as the possibility of compiling and analysing all relevant legislation on mercenaries and mercenary-related activity and disseminating that collection of documents, with a view to raising awareness of the issue and corresponding approaches adopted (see E/CN.4/2006/11 and Add.1).

92. The International Convention against the Recruitment, Use, Financing and Training of Mercenaries, which the General Assembly adopted by resolution 44/34 of 4 December 1989, entered into force on 20 October 2001 when the twenty-second instrument of ratification or accession was deposited with the Secretary-General of the United Nations. The Republic of Moldova deposited its instrument of accession on 28 February 2006. There are now 28 States parties to the Convention: Azerbaijan, Barbados, Belarus, Belgium, Cameroon, Costa Rica, Croatia, Cyprus,

Georgia, Guinea, Italy, Liberia, Libyan Arab Jamahiriya, Maldives, Mali, Mauritania, Republic of Moldova, New Zealand, Qatar, Saudi Arabia, Senegal, Seychelles, Suriname, Togo, Turkmenistan, Ukraine, Uruguay and Uzbekistan.

VIII. Future activities

93. Within its mandate to develop new proposals on possible new standards, the Working Group has endorsed the proposal of former Special Rapporteur Shameen to address fundamental questions, such as the core actors in the monopoly of the use of force, at a high-level round table, convened under United Nations auspices, which would allow for high-level political as well as more philosophical and methodological consideration of the issues.

94. In order to fulfil its mandate and establish a clear distinction between those companies which offer security services in strict compliance with imperative norms such as respect for the principle of the State's monopoly on the use of the force and those conducting mercenary activities which should be criminalized, the Working Group asked Member States whether they would be prepared to host a regional or global round table to discuss the role of the State as holder of the monopoly on the use of force. Armenia, Costa Rica, Ghana, Honduras, Lebanon, Morocco, Mexico and Venezuela responded favourably. The Working Group will therefore engage during the coming months in discussions with these countries, with a view to organizing such a meeting, which would facilitate a critical understanding of the responsibilities of the different actors including private military and security companies in the current context, and their respective obligations for the protection and promotion of human rights.

IX. Conclusions and recommendations

95. **Noting that only 28 States have ratified the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, the Working Group recommends that Member States that have not yet done so consider ratifying or acceding to the International Convention and incorporating relevant legal norms into their national legislation.**

96. **The Working Group encourages States to incorporate international legislation, as well as regional legislation where such regional frameworks exist (e.g. AU, ECOWAS and CIS), into national law.**

97. **The Working Group recommends the application of the normative provisions of the draft Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights to those private military and security companies operating and providing military and security services in more than one country, or as a cluster of economic entities operating in two or more countries. Particular consideration should be given in this regard to the right to security of the person, the rights of workers and respect for national sovereignty, territorial integrity and human rights.**

98. **The Working Group recommends that, in order to ensure that the military assistance, consultancy and security services offered by private companies at the international level neither impede the enjoyment of nor violate human**

rights, Governments of States from which these private companies export such services should adopt legislation to set up regulatory mechanisms to control and monitor their activities, including a system of registering and licensing which would authorize these companies to operate and allow them to be sanctioned when the norms are not respected.

99. **The Working Group also encourages Governments that import the military assistance, consultancy and security services provided by private companies to establish regulatory mechanisms for the registering and licensing of these companies in order to ensure that imported services provided by these private companies neither impede the enjoyment of human rights nor violate human rights in the recipient country.**

100. **The Working Group recommends that United Nations departments, offices, organizations, programmes and funds establish guidelines containing pertinent criteria aimed at regulating and monitoring the activities of the private security/military companies working under their respective authorities. They should also require and ensure that the guidelines comply with human rights standards and international humanitarian law. In particular, they should require that the personnel employed by these companies have not been involved in human rights abuses.**

101. **The Working Group recommends that in order to fulfil its complex mandate and the challenges given to it under Commission resolution 2005/2, it be allowed to hold three sessions per year.**

102. **The Working Group supports the recommendation of the former Special Rapporteur on mercenaries (see A/60/263) that a high-level round table be convened under the auspices of the United Nations to discuss the fundamental question of the role of the State as holder of the monopoly on the use of force. Such a meeting will facilitate a critical understanding of responsibilities of the different actors, including private military and security companies, in the current context and their respective obligations for the protection and promotion of human rights. The Working Group welcomes the expressed willingness of Member States to host regional round tables in this regard.**

103. **The Working Group requests the General Assembly to increase accordingly the budget allocated for the Working Group in order to meet the demands of its future activities.**